

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

10/1/04
RECEIVED

IN THE MATTER OF:

MAR 11 2004

THE JOINT APPLICATION OF ORCHARD GRASS UTILITIES, INC.
AND OLDHAM COUNTY SEWER DISTRICT FOR
APPROVAL OF THE TRANSFER OF WASTE WATER
TREATMENT FACILITIES PURSUANT TO STOCK PURCHASE
AGREEMENT BETWEEN THE PARTIES

PUBLIC SERVICE
COMMISSION

Case No. 2004-00029

RESPONSE TO MOTION FOR FORMAL HEARING AND BRIEFS

Comes Orchard Grass Utilities, Inc. ("Orchard Grass"), by counsel and for its Response to the Motion for Formal Hearing and Briefs filed on behalf of Robert L. Madison, states as follows.

The provisions of KRS 278.020(4) govern the sale of the stock of Orchard Grass to the Oldham County Sewer District (hereinafter "OCSD"). KRS 278.040(4) states:

No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

Pursuant to this statute, Orchard Grass must obtain the approval of the Commission in order for the sale of its stock to OCSD to proceed. The statute further provides that approval shall be granted if OCSD has the "financial, technical and managerial abilities to provide reasonable service". See KRS 278.020(4).

The Joint Application for Approval of Transfer ("Joint Application"), filed by Orchard Grass and OCSD provided the Commission with information establishing that OCSD has the financial, technical and managerial ability to provide reasonable service in operating the Orchard Grass Wastewater Treatment System and the Willow Creek Wastewater Treatment System. The

financial statements of OCSD for the fiscal year ending June 30, 2003, were attached as Exhibit F to the Joint Application.

The Joint Application also advised the Commission that OCSD has experienced net losses as a result of its various acquisitions of sewage treatment plants, but that following the payment of expenses associated with the newly acquired sewage treatment plants, revenue from the plants is projected to be sufficient for the operation and maintenance of the facilities in a fiscally appropriate manner. Additionally, the Joint Application advised the Commission that because of the large number of customers and the good condition of the plant facilities, the acquisition of Orchard Grass, which includes both the Orchard Grass Wastewater Treatment System and the Willow Creek Wastewater Treatment System, will make a significant contribution to the financial stability of OCSD's operations.

As is also reflected in the Joint Application, the OCSD has the required technical and managerial expertise to operate the subject wastewater treatment systems. John M. Bennett, Jr., a registered professional engineer, with extensive experience in wastewater treatment plant operation and design, is the chief engineer of OCSD and will supervise the operation of the Orchard Grass wastewater treatment plant and facilities and the Willow Creek wastewater treatment plant and facilities. The resume of Mr. Bennett was attached to the Joint Application as Exhibit H. OCSD also receives information concerning the planning and management of its wastewater treatment plants from the Louisville and Jefferson Metropolitan Sewer District. In fact, the OCSD presently owns and operates, either directly or through arrangements with MSD and private wastewater treatment facilities in Oldham County, approximately 10 wastewater treatment plants. It is clear that ODSO has the required technical and managerial expertise to

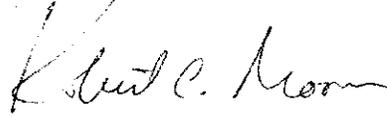
operate the subject wastewater systems.

In addition to the substantial amount of information set forth in the Joint Application establishing that the OCSD has the financial, technical and managerial ability to operate the subject wastewater treatment plants, the OCSD and Orchard Grass have answered the many questions posed in the Data Requests served by the Commission Staff and by Mr. Madison. The OCSD served answers to the approximately 80 data requests served upon it by Mr. Madison, as well as the 10 data requests served upon it by Commission Staff. Orchard Grass served answers to the 15 data requests served upon it by Mr. Madison, and joined in the answers to the Commission Staff's data requests prepared by OCSD. Taking into consideration the information provided in the Joint Application, as well as the information provided in response to the numerous data requests, there is simply no need to schedule a formal hearing in this matter to introduce further information into the record. This is not a situation where the Commission needs to judge the credibility of witnesses. Nor is it a case where the interested parties have not had the opportunity to serve data requests on Orchard Grass and OCSD. Therefore, because the Commission has all of the relevant information necessary to rule on the Joint Application, there is no reason to hold a formal hearing in this matter.

Should the Commission determine that the filing of Briefs is necessary, Orchard Grass requests that parties be required to file briefs on or before Monday, March 22, 2004.

Based on the above referenced information, Orchard Grass hereby requests the Commission to deny Mr. Madison's motion to schedule a formal hearing in this matter and, if Briefs are required, to require the parties to file same on or before Monday, March 22, 2004.

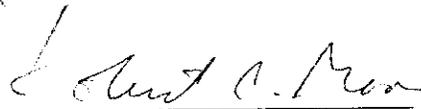
Respectfully submitted,



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Attorney for Orchard Grass Utilities Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by first class mail, postage prepaid, on Edward Schoenbaechler, Hall, Render, Killian, Heath & Lyman, P.S.C., 2501 Nelson Miller Parkway, Louisville, Kentucky 40223, Robert L. Madison, 5407 Baywood Drive, Louisville, Ky., 40241-1318, and David Edward Spenard, Assistant Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, Ky., 40601-8204 on this the ^{11th} ~~12th~~ day of March, 2004.



Robert C. Moore